

BEFORE THE COMMISSIONER OF FINANCIAL REGULATION

IN THE MATTER OF

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GOLDEN ARROW FINANCIAL, INC. \* OAH NO. DLR-CFR-76A-07-14499

LICENSEE

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OPINION AND FINAL ORDER

INTRODUCTION

This matter came before the Commissioner for argument on exceptions filed by the Respondent Golden Arrow Financial, Inc. ("Golden Arrow") to the Proposed Order of September 28, 2007. On September 26, 2007, James T. Murray ("ALJ") filed a Recommended Decision and Order in which he recommended that two of the three charges filed against Golden Arrow be sustained, that the company's mortgage lender license be revoked, and that a fine in the amount of \$18,000 be imposed.<sup>1</sup>

On September 28, 2007, the Deputy Commissioner of Financial Regulation issued a Proposed Order that adopted the ALJ's Recommended Findings of Fact, Conclusions of Law, and Recommended Order, while making certain corrections to the Recommended Order with regard to the ALJ's

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<sup>1</sup> Golden Arrow Financial, Inc. was charged with violation of Financial Institutions Article, §11-517(a)(3) and (5) and COMAR 09.03.06.03B. Based on an incorrect interpretation of the law, the ALJ found that the Licensee did not violate COMAR 09.03.06.03B. However, as noted in the Proposed Order, there was insufficient evidence in the record to support the conclusion that the Licensee did not, in good faith, believe that J.L. Ward was properly licensed or exempt from the licensing requirement.

interpretation of the licensing law. Golden Arrow, through counsel, filed exceptions to the Proposed Order.

A hearing on the exceptions was held before the Commissioner of Financial Regulation, Sarah Bloom Raskin, ("Commissioner") on January 17, 2008. Leslie D. Alderman, III, Esq. appeared on behalf of Golden Arrow. Christopher Young, Assistant Attorney General, was the presenter. The proceedings were recorded.

The exhibits from the hearing before the ALJ, as well as a transcript of that hearing, were before the Commissioner.

#### FINDINGS OF FACT

The Commissioner adopts the Findings of Fact recommended by the ALJ.

#### CONCLUSIONS OF LAW

The Commissioner adopts the ALJ's Conclusions of Law. As noted in the Proposed Order, the ALJ's statement on page 15 that there is no licensing requirement for mortgage brokers in the Financial Institutions Article is incorrect. However, this error does not affect the outcome of this case.

#### DISCUSSION

Counsel for Golden Arrow has raised a series of objections in their three separate written exceptions, some related to the facts and some related to the law. The three main legal arguments are that action against Golden Arrow

Financial is preempted by the role of U.S. Department of Housing and Urban Development ("HUD") in the sale of HUD-owned homes, that the acts related to bidding on HUD-owned homes were committed through Golden Arrow Real Estate, and that the licensing law is void for vagueness. The factual arguments relate to the role of company principals in the lending transaction at issue, and to the reuse of the money orders in the HUD transactions.

I. LEGAL ARGUMENTS.

A. Preemption.

Counsel argues that the Commissioner of Financial Regulation has no jurisdiction to consider the HUD-related bidding issues because this area has been preempted by federal statutory and regulatory provisions. In making this argument, counsel ignores the nature of this proceeding. The question before the Commissioner is whether this entity should continue to hold a mortgage lender license in Maryland. To the extent that Maryland licensees have engaged in activities that indicate untrustworthiness or dishonesty, the Commissioner is bound to consider whether their continued licensure is in the best interests of Maryland consumers. This process does not interfere in any way with HUD's ability to enforce its procedures for selling its homes or its determination of what entities may participate in the bidding process. Accordingly, the Commissioner finds that this argument is without merit.

B. Golden Arrow Real Estate.

Counsel argues that the recycling of money orders that underlies one of the charges against Golden Arrow was done through another corporate entity, Golden Arrow Real Estate, and therefore should not be considered in a proceeding brought by the Commissioner. As noted above, the Commissioner has an obligation to insure that mortgage lender licensees are trustworthy and honest, and that they do not pose a risk to the public. James Ward, the president of Golden Arrow, was also the broker of the real estate company, and Golden Arrow was the lender in each of the HUD transactions. Dillon Ward, another principal in Golden Arrow, used recycled money orders in bidding on one of the HUD homes. The interconnection of the principals and the corporate entities involved in the HUD transactions demonstrate that their conduct is entirely relevant to the Commissioner's determination of whether action should be taken against the license of Golden Arrow.

C. The Constitutionality of the Licensing Provisions.

Counsel argues that the licensing law, specifically § 11-517(a)(5) of the Financial Institutions Article, violates the State and Federal Constitutions because it is impermissibly vague. The Maryland courts have considered challenges to disciplinary provisions similar to the ones being cited by counsel, and have rejected those challenges. See, e.g., *Finucan v. Board of Physicians*, 380 Md. 577 (2004) (Health Occupations Article prohibition of "immoral

or unprofessional conduct" is not unconstitutionally vague); *Blaker v. State Board*, 123 Md. App. 243 (1998) (disciplinary statute governing professional incompetence was not void for vagueness); *Bernstein v. Real Estate Commission*, 221 Md. 221 (1959) (no vagueness challenge, but appellate review of charges against licensees for, among other things, "bad faith, incompetency or untrustworthiness, or dishonest, fraudulent, or improper dealings"). As the Court of Special Appeals noted in *Blaker*, "a statute is not void for vagueness merely because it allows for the exercise of some discretion." 123 Md. App. At 257 (quoting *Bowers v. State*, 283 Md. 115, 121 (1978)). Counsel has shown no reason why the Commission should overturn long-standing precedent upholding similar language in licensing statutes, so this argument also is rejected.

## II. Factual Arguments.

### A. Money Order Transactions.

Counsel argues that the recycling of money orders was done as a convenience for clients of the real estate agency so that they would not have to obtain new money orders each time. On this basis, he claims that there was no wrongdoing, and therefore no actions which should have been considered in this proceeding.

The evidence, both documentary and through witnesses, show that the money order recycling was not done as a

convenience to clients, but was engaged in by principals of the real estate brokerage (and the mortgage lender) and its employees as they attempted to acquire properties for investment purposes. In his testimony, James Ward stated that his work with the HUD bidding process was an attempt to help "poor folks who want to get into their first homes." T. 251. The transactions before the Commissioner show a different picture entirely. James Ward, his family members, and agents working for his real estate brokerage bid on HUD properties and altered money orders for the purpose of appearing to fulfill HUD requirements. The money orders were not recycled for the same bidders, but were altered to be used for different bidders on different properties. See Findings of Fact #22 - #27. As the ALJ noted, the purpose of the money orders was to insure that earnest money deposits actually existed. The use of recycled, and altered, money orders obviously defeated this purpose. Although James and Dillon Ward both testified that monies from buyers were deposited in the brokerage escrow account, no evidence of such an account, or deposits to it, was offered. In fact, James Ward testified that the bank had closed his escrow account for inactivity. T. 263. Thus, there is ample evidence to support the ALJ's conclusion that "besides recycling money orders, GARE (Golden Arrow Real Estate) was not using an escrow account for earnest money deposits that it was receiving for bids on HUD properties (or it was not actually receiving deposits at all)." ALJ's

Recommended Order at 19.

James Ward was the broker of the real estate company, as well as the president of Golden Arrow. All of the recycled money order transactions involved in the charges were conducted through the real estate brokerage, with Golden Arrow as the lender. Both James Ward and Dillon Ward, also a principal at Golden Arrow, admitted to using the recycled money orders. For all these reasons, there is evidence of wrongdoing in the HUD transactions that directly affects the issue of whether Golden Arrow should hold a mortgage broker's license. Individuals who engage in activities of this type cannot be relied on to conduct a mortgage lending business in an honest, fair, equitable, and efficient manner.

B. The [REDACTED] Loan.

Counsel argues that there is no evidence that Golden Arrow or any of its agents misrepresented any facts to the borrowers, that there is no evidence that J.L. Ward was an agent of Golden Arrow in the [REDACTED] loan, and that Dillon Ward's actions in the [REDACTED] loan should not expose Golden Arrow to sanctions.

1. The Loan Application.

Mrs. [REDACTED], concerned about a pending foreclosure of her home, consulted the Yellow Pages to find a lender that might help her out. T. 198. She called Golden Arrow, and was put in touch with J.L. Ward. Mr. Ward, who was not related to James and Dillon Ward, was a mortgagor originator

for Golden Arrow, and had worked with the company for several years prior to this time. Finding of Fact # 3.

J.L. Ward assisted Mrs. [REDACTED] and her husband in filing a loan application with People's Choice Home Loan, Inc. Golden Arrow's name was on all the loan papers, including being responsible for payment of the appraisal fee. The loan was approved, in the amount of \$179,500, and was scheduled to close on January 18, 2006. CFR Exh.# 30. The property appraised for \$215,000. CFR Exh.# 21. The draft HUD-1 Settlement Sheet showed a payout to the existing mortgagor of \$167,159.10, as well as a broker fee to Golden Arrow of \$5,380.50. CFR Exh.# 29. A loan application form from the files of Golden Arrow shows a debt to Countrywide Home Loan in the amount of \$157,170. CFR Exh.# 26. The higher amount on the HUD-1 reflects the demand statement dated January 12, 2006, which also noted that the loan was in foreclosure. CFR Exh.# 31.

These documents and the statement from People's Choice dated January 26, 2006 that the loan was "Approved. Not Accepted." (CFR Exh.# 23) demonstrate that J.L. Ward's representation to Mr. and Mrs. [REDACTED] that their loan had been denied as a result of the pending foreclosure was not true. This is a clear violation of Section 11-517(a)(3)(iii).

The impact of this false statement on the [REDACTED] was devastating. Had settlement occurred on January 18, 2006 as scheduled, the lender would have been paid off in full, and



the [REDACTED] would have retained their home, with a value of \$215,000 subject to a loan, with a reputable lender, in the amount of \$179,500.

There is no question that J.L. Ward was acting in his capacity as an agent of Golden Arrow when he gave the Simpsons the false information. All the loan documents were in the name of Golden Arrow, and J.L. Ward's relationship with the [REDACTED] was based on an assignment by Golden Arrow. And when he told them of the ``denial'', he advised them to come to the Golden Arrow offices because he had another possible lender. T. 201.

## 2. The Quitclaim Deed.

Mrs. [REDACTED] identified James Ward and Dillon Ward as being two of the individuals present at the Golden Arrow offices when she and her husband arrived, and present when the promissory note and quitclaim deed were signed. T. 203. Dillon Ward notarized the quitclaim deed that provided for the Simpsons to turn over their property to Ricardo Johnson for \$13,779. T. 325. The promissory note that he notarized provided for interest at an annual rate of over 297%. Finding of Fact # 9. The draft of the promissory note, the typewritten version of the note, and the draft of the quitclaim deed, written on Golden Arrow stationary, were all produced by Golden Arrow in response to a subpoena for documents contained in its files. CFR Exh. # 33, 34, 35.

The licensing law provides that the Commissioner may suspend or revoke a license if an owner, director, officer,

member, partner, stockholder, employee, or agent of the licensee, in connection with a mortgage loan or loan application, engages in any illegal or dishonest activities or misrepresents any material facts to anyone entitled to that information. Section 11-517(a)(3). J.L. Ward, an agent of Golden Arrow, misrepresented to the Simpsons the status of their loan application at People's Choice, saying that it had been denied. He then directed them to the offices of Golden Arrow, where he had them sign documents that they did not understand. These documents obligated them to repay a loan with annual interest of almost 300%, and allowed them to lose their home via a quitclaim deed in the amount of \$13,779. According to the testimony of Mrs. Simpson, James Ward and Dillon Ward, officers of Golden Arrow, were present during this transaction, and Dillon Ward notarized the documents. As to Dillon Ward's responsibility, the ALJ stated:

Moreover, as an officer of the Licensee, he had an obligation to know what was going on at the Licensee's offices. At the very least, he knew, based on the documents, that J.L. Ward was transacting business related to a mortgage loan in the Licensee's office that did not involve the Licensee. More importantly, as an officer of the Licensee, Dillon had an obligation to know what was going on at the Licensee's place of business and why J.L. Ward would be conducting mortgage business, possibly lending, that did not involve the Licensee.

Recommended Order at 16 - 17.

#### C. Conclusions.

These facts lead to the inevitable conclusion that officers and agents of Golden Arrow made misrepresentations in connection with a mortgage loan transaction, in violation

of Section 11-517(a)(3), and engaged in dishonest activities, in violation of Section 11-517(a)(5), with regard to their dealings with the Simpsons.

### III. Sanctions.

In considering the appropriate sanction to be imposed, the Commissioner must consider the factors set forth in Section 11-518(e). The violations in this case are serious. The conduct of the Wards in the HUD transactions shows an intentional disregard for the rules under which the sales of properties are to be conducted as well as a willingness to repeatedly falsify documents used in those transactions. The actions of their agent J.L. Ward in the Simpson loan represent the worst type of abuse in the mortgage lending business. Home owners who could have paid off their original loan, and been placed with a reputable lender, were instead turned over to what James Ward described as a "loan shark." CFR Exh.# 15. They were allowed to sign documents that they did not understand which provided for exorbitant interest and the turnover of their home to the "shark" for a tiny fraction of its appraised value. To allow this company to continue to offer lending services to citizens of Maryland is not prudent. Maryland citizens are not protected when company officials show such a high level of untrustworthiness. No evidence of good faith has been presented. James and Dillon Ward's efforts to distance themselves from the actions of J.L. Ward emphasize the lack of care and supervision that went into

the operation of Golden Arrow. The effect of J.L. Ward's actions on the [REDACTED] has been set forth in detail, and cannot be underestimated. For all these reasons, the sanction recommended by the ALJ, revocation of the license and imposition of an \$18,000 civil penalty are wholly appropriate.

ORDER

The Exceptions filed by the Licensee, Golden Arrow Financial, Inc., having been considered, it is this 24th day of March, 2008, by the Commissioner of Financial Regulation, **ORDERED**,

- A. That the Licensee, Golden Arrow Financial, Inc., is in violation of Md. Code Ann. Fin. Inst. § 11-517(a)(3) and (5);
- B. That the Licensee, Golden Arrow Financial, Inc., is not in violation of Code of Maryland Regulations (COMAR) 09.03.06.03;
- C. That the Licensee, Golden Arrow Financial, Inc., cease and desist from engaging in the mortgage lending business;
- D. That the mortgage lending license of Golden Arrow Financial, Inc. is REVOKED;
- E. That the Licensee, Golden Arrow Financial, Inc., pay a civil penalty in the amount of \$18,000 within thirty (30) days of the date of this Order; and

F. That the records and publications of the  
Commissioner of Financial Regulation reflect this  
decision.

*Sarah Bloom Raskin*  
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Commissioner of Financial  
Regulation